

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10
11

12 DAVID RUSSELL HART,

13 Plaintiff,

CIV S-04-2497 DFL PAN PS

14 v.

ORDER

15 COMMISSIONER OF INTERNAL REVENUE
16 SERVICE,

17 Defendant.
18

—oOo—

19 On August 20, 2004, petitioner paid the filing fee and
20 filed in this court's Fresno division a "'Plea in Abatement' by
21 Special Appearance, Notice and Demand to Dismiss for Lack of
22 Jurisdiction."

23 On November 23, a scheduling conference was held before
24 the Honorable Dennis L. Beck. On November 24, Judge Beck issued
25 an order transferring this action to the Sacramento division as
26 the "more appropriate venue" based on plaintiff's Truckee

1 residence (plaintiff stated he had filed in the Fresno division
2 because he sends his tax returns to a Fresno address). In the
3 same order, Judge Beck directed plaintiff to file an amended
4 complaint within 60 days and to complete service of process upon
5 defendant 45 days thereafter.

6 The case was transferred to this court on November 29,
7 2004, and on December 3, the Clerk of Court issued this court's
8 "Order Requiring Timely Service and Joint Status Report."

9 On January 26, 2005, plaintiff timely filed an amended
10 complaint entitled "'Complaint' Amended, Plea for Discovery
11 Motion to Suppress Evidence and Demand to Dismiss for Lack of
12 Jurisdiction by Special Appearance."

13 However, plaintiff has not demonstrated completion of
14 service of process upon defendant within either the 45-day period
15 accorded by Judge Beck's order (March 15, 2005), or the 120
16 period accorded by this court's December 3 order (June 1, 2005).¹

17 Service of process upon the United States and its
18 agencies is governed by Fed. R. Civ. P. (i), which provides:
19 "(1) Service of process upon the United States shall be effected
20 (A) by delivering a copy of the summons and of the complaint to
21 the United States attorney for the district in which the action
22 is brought . . . or by sending a copy of the summons and of the
23 complaint by registered or certified mail addressed to the civil
24 process clerk at the office of the United States attorney and

25 ¹ These periods include an additional three days for service of the
26 respective orders pursuant to Fed. R. Civ. P. 6(e).

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and . . .

(2) (A) Service on an agency or corporation of the United States, or an officer or employee of the United States sued only in an official capacity, is effected by serving the United States in the manner prescribed by Rule 4(I)(1) and by also sending a copy of the summons and complaint by registered or certified mail to the officer, employee, agency, or corporation."

In order to comply with Rule 4(i), plaintiff is directed to send by certified or registered mail a copy of the summons and complaint to each of the following:

Mark W. Everson, Commissioner
Internal Revenue Service
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

McGregor W. Scott
United States Attorney
Eastern District of California
c/o Civil Process Clerk
501 I Street, Suite 10-100
Sacramento, CA 95814-2322

Alberto Gonzalez
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Plaintiff is directed to file proof of such service by July 20, 2005. Failure to comply with this order will result in

////

////

1 a recommendation this action be dismissed pursuant to Fed. R.
2 Civ. P. 4(m) and Fed. R. Civ. P. 41(b).

3 So ordered.

4 Dated: July 6, 2005.

5 /s/ Peter A. Nowinski

6 PETER A. NOWINSKI

7 Magistrate Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26